

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNIVERSITY OF NEBRASKA,

Defendant.

Case No. 8:03CV00038

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Commander of the United States Army Corps of Engineers ("COE") and the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106, 107, and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs for response actions taken at or in connection with the release or threatened release of hazardous substances at the Former Nebraska Ordnance Plant Superfund Site ("the Site") located near Mead, Saunders County, Nebraska.

B. By entering into this Consent Decree, the University of Nebraska (hereinafter, "University") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint. The United States does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by University.

C. In addition to undertaking the requirements of this Consent Decree, University also has agreed to perform a Remedial Investigation and Feasibility Study ("RI/FS") and removal actions at certain areas of the Site, as more fully described in an administrative order on consent ("AOC") with EPA, CERCLA Docket No. 07-2005-0053.

D. The United States and University agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over University. Solely for the purposes of this Consent Decree and the underlying complaint, University waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. University shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon University and its successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of University under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "COE" shall mean the United States Army Corps of Engineers and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "OU2" shall mean the area addressed by, and the remedial action to be implemented pursuant to, the Record of Decision issued April 7, 1997, addressing groundwater contamination at the Site.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and the University.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States has paid at or in connection with the Site through September 30, 2003, with respect to EPA costs, through September 30, 2004, with respect to COE costs, and through August 21, 2004, with respect to DOJ costs.

m. "Plaintiff" shall mean the United States.

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "University" shall mean the Board of Regents of the University of Nebraska on behalf of the University of Nebraska.

p. "Settling Federal Agencies" shall mean the United States Environmental Protection Agency and the Department of Defense on behalf of the Army Corps of Engineers.

q. "Site" shall mean the Former Nebraska Ordnance Plant Superfund site, encompassing approximately 16,000 acres, more or less, at the location generally shown on the *Consent Decree in United States v. University of Nebraska, Case No. 8:03cv00038*

map attached hereto as Appendix A. University owns and operates approximately 9,500 acres of the Site.

r. "State" shall mean the State of Nebraska.

s. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF RESPONSE COSTS

4. Within 30 days of entry of this Consent Decree, University shall pay to the United States \$71,939.

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to University by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Nebraska following lodging of the Consent Decree.

6. At the time of payment, University shall also send notice that payment has been made to COE, EPA and DOJ in accordance with Section XII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 07 7R, DOJ case number 90-11-2-07548/1, U.S. Attorney's Office case number 2004CV00495, and the Court case number captioned above, Case No. 8:03CV00038.

7. The total amount to be paid pursuant to Paragraph 4 shall be distributed to the Settling Federal Agencies to reimburse costs incurred by each Settling Federal Agency in connection with the Former Nebraska Ordnance Plant Site and shall be retained and used to conduct or finance response actions at or in connection with the Site, or shall be transferred by EPA to the EPA Hazardous Substance Superfund and by COE to the Defense Environmental Restoration Fund.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If the University fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. For any violation of this Consent Decree, including but not limited to timely payment of any amounts due under Paragraph 4, University shall pay to the United States, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$500.00 per violation per day for the first seven days, \$1000.00 per violation per day for the eight through fifteenth days, \$1,200.00 per violation per day for the sixteenth through thirtieth day, and \$2,500.00 per violation per day for each day thereafter.

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b. Stipulated penalties are due and payable within 45 days of the date of the demand for payment of the penalties by the United States. All payments to the United States under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 07 7R, DOJ Case Number 90-11-2-07548/1, U.S. Attorney Case Number _____, and the Court case number captioned above. University shall send the check (and any accompanying letter) to:

EPA Superfund
 US EPA Cincinnati Accounting Operations
 PO Box 371099M
 Pittsburgh, PA 15251

Alternatively, stipulated penalties under this paragraph may be paid by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to University by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Nebraska.

c. At the time of each payment, University shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference each case identifying number referenced in the previous paragraph.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the United States has notified University of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity required by this Consent Decree. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Violations of the AOC referenced in Section I hereof are not subject to stipulated penalties under this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, University shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of University's failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse

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University from payment as required by Section V or from performance of any other requirements of this Consent Decree. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of University's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

VII. COVENANT NOT TO SUE BY UNITED STATES

1. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservations of Rights by United States), in consideration of the actions that will be performed, the payments that will be made by University, and the covenants provided by University in connection with this Consent Decree and its appendices, the United States covenants not to sue or to take administrative action against University pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), to recover Past Response Costs or costs incurred and to be incurred responding to soil and groundwater contamination caused by explosive compounds released at the Site by the United States government and/or its contractors and subcontractors. In addition, the United States covenants not to sue or take administrative action pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for injunctive relief responding to soil and groundwater contamination caused by explosive compounds released at the Site by the United States government and/or its contractors and subcontractors. This covenant not to sue shall take effect upon receipt by the United States of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by University of its obligations under this Consent Decree, including the attachments hereto. This covenant not to sue extends only to University and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against University with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against University, and this Consent Decree is without prejudice to, all rights against University, with respect to:

- a. liability for failure of University to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the covenant set forth in paragraph 13, above ;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability, based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance at or in connection with the Site, after signature of this Consent Decree by University;

g. liability arising from the University's past, present, or future disposal, release or threat of release of a hazardous substance at the Site;

h. liability arising from the University's past, present, or future disposal, release or threat of release of a hazardous substance outside of the Site; and

i. such additional access and institutional controls as may be needed at the Site.

14.1 United States Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, and in addition to the reservations set forth in Paragraph 14, above, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel University (1) to perform response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of OU2:

(i) conditions at the Site, previously unknown to the United States, are discovered,
or

(ii) information, previously unknown to the United States, is received, in whole or in part, and the United States determines that these previously unknown conditions or information together with any other relevant information indicates that the University's action or inaction has contributed to or aggravated soil or groundwater contamination by explosive compounds.

14.2 United States Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, and in addition to the reservations set forth in Paragraph 14, above, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel University (1) to perform response actions relating to the Site or (2) to reimburse the

United States for additional costs of response if, subsequent to certification of completion of OU2:
 (i) conditions at the Site, previously unknown to the United States, are discovered,
 or

(ii) information, previously unknown to the United States, is received, in whole or in part and the United States determines that these previously unknown conditions or information together with any other relevant information indicates that the University's action or inaction has contributed to or aggravated soil or groundwater contamination by explosive compounds.

14.3 For purposes of Paragraph 14.1, the information and the conditions known to the United States shall include only that information and those conditions known to the United States as set forth in the OU2 ROD and the administrative record supporting that ROD. For purposes of Paragraph 14.2, the information and the conditions known to the United States shall include only that information and those conditions known to the United States as of the date of the certification of completion and set forth in the ROD, the administrative record supporting that ROD, and the post-ROD administrative record.

14.4 As soon as reasonably practicable after such a certification is possible, the United States will certify in writing that the remedy required by the OU2 ROD has been constructed satisfactorily and is operational and functional. This certification shall constitute the certification of completion of OU2 for purposes of Paragraphs 14.1 and 14.2 above.

IX. COVENANT NOT TO SUE BY UNIVERSITY

15. University covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees, with respect to Past Response Costs, for soil or groundwater contamination caused by explosive compounds disposed of at the Site by the United States government and/or its contractors and subcontractors, or this Consent Decree, or for any costs University has incurred responding to releases or threatened releases of hazardous substances at the Site (including costs associated with removal and disposal of PCB-containing equipment and PCB-contaminated soils) as of the date of University's execution of this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or under State or common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs or costs associated with responding to soil and groundwater contamination caused by explosive compounds disposed of at the Site by the United States government and/or its contractors and subcontractors.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. University's reservations of rights. University reserves, and this Consent Decree is without prejudice to: (a) any claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on United States' selection of response actions, or the oversight or approval of University's plans or activities. The foregoing reservation applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; (b) contribution claims against the United States in the event any claim is asserted by the United States against the University under Paragraph 14 (b), (c), and (e), and Paragraphs 14.1 and 14.2; and (c) any claims against the United States for compensation or off-set for loss of use or other diminution in value of real property directly resulting from the property use restrictions referenced in Paragraph 22.

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that University is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs and costs incurred and to be incurred responding to soil and groundwater contamination caused by explosive compounds disposed of at the Site by the United States government or its contractors and subcontractors.

20. University agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify COE, EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. University also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify COE, EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, University shall notify COE, EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the University shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by United States set forth in Section VII. Additionally, the University agrees that it shall not assert, and may not maintain, any defense or claim based on the running of any applicable statute of limitations or on the principle of laches in any subsequent administrative or judicial proceeding brought by the United States for injunctive relief, recovery of response costs, or any other relief relating to the Site, for a period of six years following the commencement of physical on-site construction of any remedy selected in any Record of Decision ("ROD") based upon the RI/FS referenced in Section I herein.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

22. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, or otherwise respond to explosives, solvent, or other contamination by hazardous substances on the Site, is owned or controlled by the University, the University shall, at no cost to the United States:

a. commencing on the date University executes this Consent Decree, provide the United States and its representatives, including but not limited to COE and EPA and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree, or otherwise respond to explosives, solvent, or other hazardous substance contamination on the Site its appendices, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;

4. Obtaining samples;
5. Assessing the need for, planning, or implementing response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by University or its contractors or agents, consistent with Section XII (Access to Information); and
7. Assessing University's compliance with this Agreement.

The United States shall make reasonable efforts to coordinate such access with the University so as not to interfere unduly with University activities.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of any response actions that have been, or may be, performed at the Site, and, except for maintenance of the remedy, and further cleanup and other related land stewardship activities, refrain from any use of the indicated areas shown on the map in Appendix B except for use as wildlife habitat.

c. commencing on the date of lodging of this Consent Decree, discontinue any use for human consumption of ground water contaminated with any of the constituents listed in Appendix D to this Consent Decree on portions of the Site owned or controlled by University unless it has been treated before use to standards acceptable to EPA and Nebraska Health and Human Services System consistent with the Safe Drinking Water Act and applicable Nebraska law, respectively. Annually, on or before April 1, COE shall provide University with information sufficient to identify the location and extent of the contaminant plumes on the Site. Nothing in this Paragraph is intended to alter any requirement the COE may have to provide a potable water supply to University.

d. University shall, within 60 days of entry of this Consent Decree, execute and file a permanent notation on each deed, consistent with the requirements for a deed notation contained in Nebraska Revised Statutes Section 76-2, 119, for the North Proving Ground/Burning Ground area identified in Appendix B and the closed solid waste disposal area previously licensed by the Nebraska Department of Environmental Quality ("NDEQ") (legal description attached hereto as Appendix C). A copy of such notation shall be provided to the NDEQ and the EPA. The deed notices required by this paragraph shall be maintained permanently and may not be modified or withdrawn without the prior written approval of the EPA Contact identified in Paragraph 35 or such successor as EPA may designate in writing. For the area where the United States reports disposal of military munitions or constituents thereof, the deed notation shall indicate the coordinates of such disposal, as well as what is believed to

have been disposed of, such information to be provided by the United States within 30 days of entry of this Consent Decree.

23. The requirements set forth in paragraph 22, above, are intended to run with the land. Should University sell or otherwise transfer any interest in any portion of the Site owned or controlled by University, then University shall insert in the deed or other transfer instrument a covenant, easement, or servitude sufficient to ensure that any subsequent owner or transferee of the University's interest shall be bound by and shall abide by the requirements set forth in paragraph 22, above. University shall provide EPA with written notice not less than 45 days prior to any such sale or other transfer.

24. The covenant, easement, or servitude contemplated by paragraph 23 shall authorize University to enforce the requirements of paragraph 22, above, and shall name EPA as a third-party beneficiary with authority also to enforce these requirements.

25. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement any remedy that may be selected for the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, University shall cooperate with EPA's efforts to secure such governmental controls.

26. Notwithstanding any provision of this Agreement, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

27. If the Site, or any other property where access is needed to implement this Consent Decree is owned or controlled by the United States, the United States shall provide such access, at all reasonable times and upon reasonable notice, at no cost to University.

XII. ACCESS TO INFORMATION

28. University shall make available to the United States, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site, except that University need not retain or make available, under this Paragraph, any technical reports originated by COE or EPA in connection with the COE cleanup at the Site.

29. Confidential Business Information and Privileged Documents.

a. University may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified University that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to University.

b. University may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the University asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. University shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the University's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States pertaining to the Site shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

31. Until 10 years after the entry of this Consent Decree, University shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the 10-year document retention period in the preceding paragraph, University shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, University shall deliver any such records to EPA.

33. University hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

34. The United States acknowledges that COE is subject to all applicable Federal record retention laws, regulations, and policies.

XIV. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of University that have not been disputed in accordance with this Section.

36. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other a written Notice of Dispute. Any agreement reached by the parties as a result of informal negotiations shall be reduced to writing, signed by both parties, and shall upon signature by both parties be incorporated into and become an enforceable part of this Consent Decree.

37. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the United States shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, University invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by University.

b. Within 10 days after receipt of University's Statement of Position, United States will serve on University its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by United States.

38. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, including any disputes regarding restrictions on the use of, or the United States' need for access to, University owned or controlled property, and all other disputes that are

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accorded review on the administrative record under applicable principles of administrative law, shall be conducted pursuant to the procedures set forth in this Paragraph. Nothing in this Consent Decree shall be construed to allow any dispute by University regarding the validity of any provision of the RODs issued in connection with this Site.

a. An administrative record of the dispute shall be maintained by the United States and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. The parties may submit supplemental or responsive statements of position, as appropriate.

b. The Regional Judicial Officer, EPA Region 7, will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall be binding upon the parties, subject only to the right to seek judicial review pursuant to Paragraph 38.c and d., below.

c. Any administrative decision rendered pursuant to Paragraph 38.b., above, shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the party seeking review and served on all parties within 20 days of receipt of the decision of the Regional Judicial Officer. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and, if appropriate, a schedule within which the dispute must be resolved to ensure protection of public health and the environment and the orderly implementation of this Consent Decree. Any response shall be filed within 20 days of respondent's receipt of the motion.

d. In proceedings on any dispute governed by this Paragraph, appellant shall have the burden of demonstrating that the decision of the Regional Judicial Officer is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the Judicial Officer's decision shall be on the administrative record compiled pursuant to Paragraph 38.a., above.

39. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of University under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute.

XV. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the others in writing. Written notice as specified herein shall constitute complete satisfaction

of any written notice requirement of the Consent Decree with respect to the United States and University, respectively.

As to the United States:

DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-07548/1)
P.O. Box 7611
Washington, D.C. 20044-7611

COE:

Catherine Sanders, Attorney
U.S. Army Corps of Engineers
Office of District Counsel
700 Federal Building
601 E. 12th Street
Kansas City, MO 64106-2896

EPA:

Michael Massey
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, KS 66101

As to University:

Corporation Secretary
The Board of Regents of the University of Nebraska
3835 Holdrege Street
Lincoln, NE 68583-0745

XVI. EFFECTIVE DATE

41. This Consent Decree shall become effective on the date that this Consent Decree is entered by the Court.

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XVII. RETENTION OF JURISDICTION

42. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION

43. This Consent Decree and its Appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the judicial settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to this Consent Decree other than those expressly contained herein. The following Appendices are attached to and referenced by this Consent Decree:

“Appendix A” is a map showing the location of the Site;

“Appendix B” is an aerial photograph showing the landfill at the sewage plant (marked by “WD”) and the North Proving Ground/Burning Ground area, use of which is to be restricted;

“Appendix C” is a legal description of the University’s closed solid waste disposal area.

“Appendix D” is a list of the contaminants of concern in groundwater identified in the OU 2 ROD.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

44. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. University consents to the entry of this Consent Decree without further notice.

45. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

46. Each undersigned representative of a Party to this Consent Decree certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

47. University hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified University in writing that it no longer supports entry of the Consent Decree.

48. University shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. University hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

XXI. FINAL JUDGMENT

49. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and the University with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are not representations, agreements or understandings relating to this Consent Decree other than those expressly contained herein.

50. Upon execution of this Consent Decree by each of the Parties and entry of this Consent Decree as a final judgment by this Court, the original Consent Decree shall be returned to the United States Attorney's Office and a copy of this Consent Decree shall be maintained in the Clerk's Office.

SO ORDERED THIS ____ DAY OF _____, 20__ .

United States District Judge

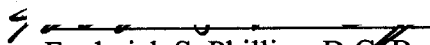
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The Regents of the University of Nebraska, Civil Action No. 8:03-cv-0038, relating to the Nebraska Ordnance Plant, Mead, Nebraska, Superfund Site.

FOR THE UNITED STATES OF AMERICA

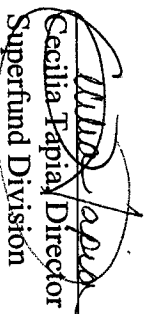
Date: _____

Kelly A. Johnson
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

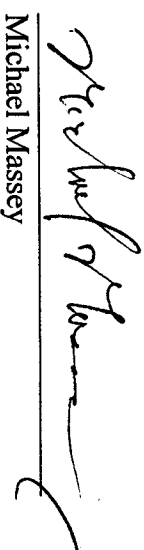
Date: 4/13/05


Frederick S. Phillips, D.C. Bar # 43372
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

U.S. Environmental Protection Agency

Date: 2/11/05

 Cecilia Tapia, Director
 Superfund Division

U.S. Environmental Protection Agency, Region 7

Date: 2/11/05

 Michael Massey

 Assistant Regional Counsel, Region 7
 U.S. Environmental Protection Agency
 901 N. 5th Street
 Kansas KS 66101


FO /ER OF NEBRASKA:

BC /F R ITS, UNIVERSITY OF NEBRASKA

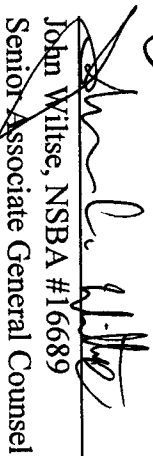
Date: _____


 Jarvis, President

Date: _____


 Jarvis, Vice President for Business and Finance

Date: _____

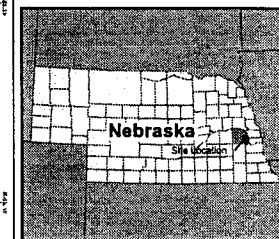

 John Wiltse, NSBA #16689
 Senior Associate General Counsel








Agent Authorized to Accept Service on Behalf of Above-signed Party:

Corporation Secretary
The Board of Regents of the University of Nebraska
3835 Holdrege Street
Lincoln, NE 68583-0745

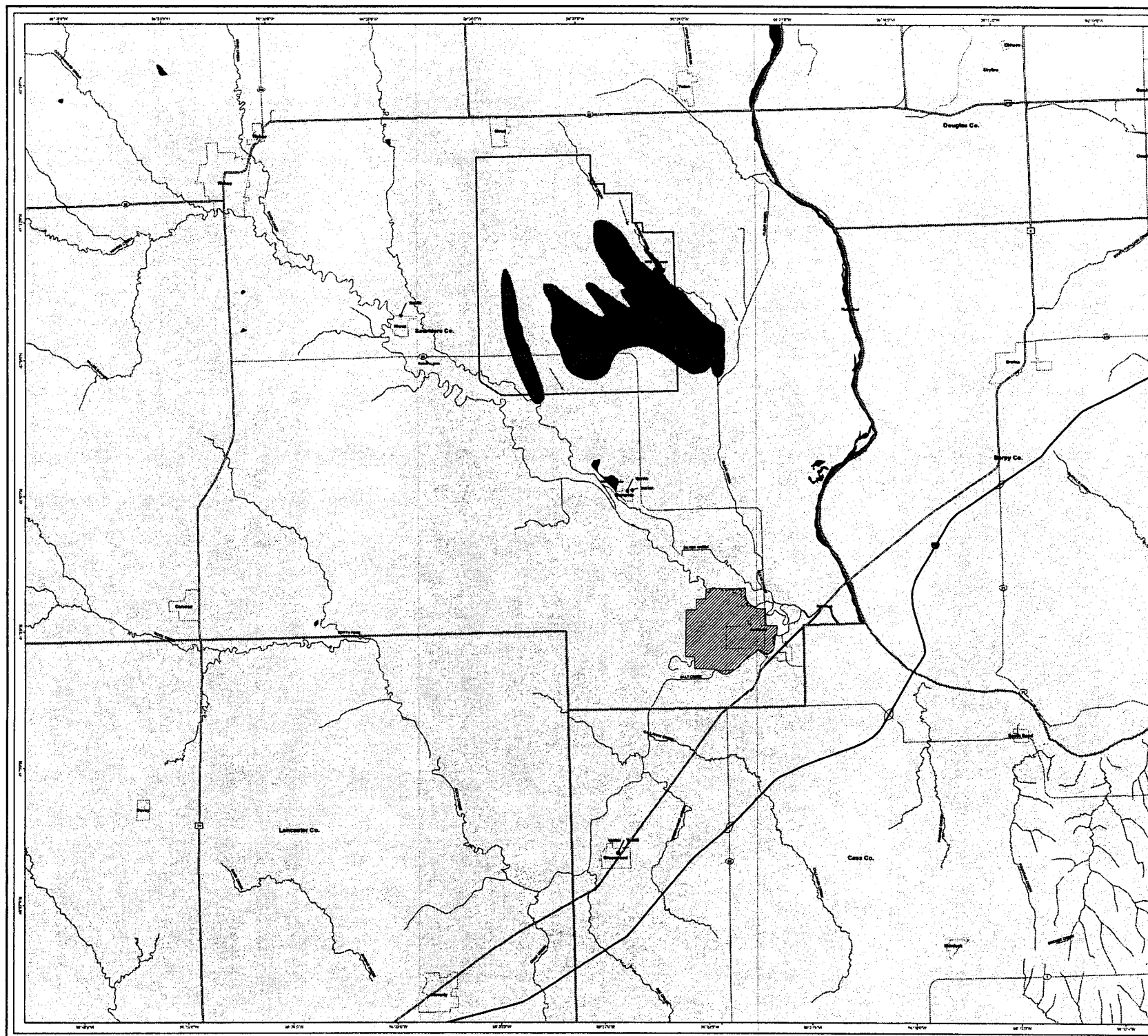
Figure 1
Municipal Water Systems

**Former Nebraska
Ordinance Plant
Mead, Nebraska**



-  Former Nebraska Ordinance Plant
-  Municipal Wells
-  Groundwater Flow
-  Cities/Villages
-  NOP Contaminant Plumes
-  Ashland-Lincoln Wellfield
-  Counties

0 1 2 4
Miles



Prepared By:

TechLaw
Quality & Integrity

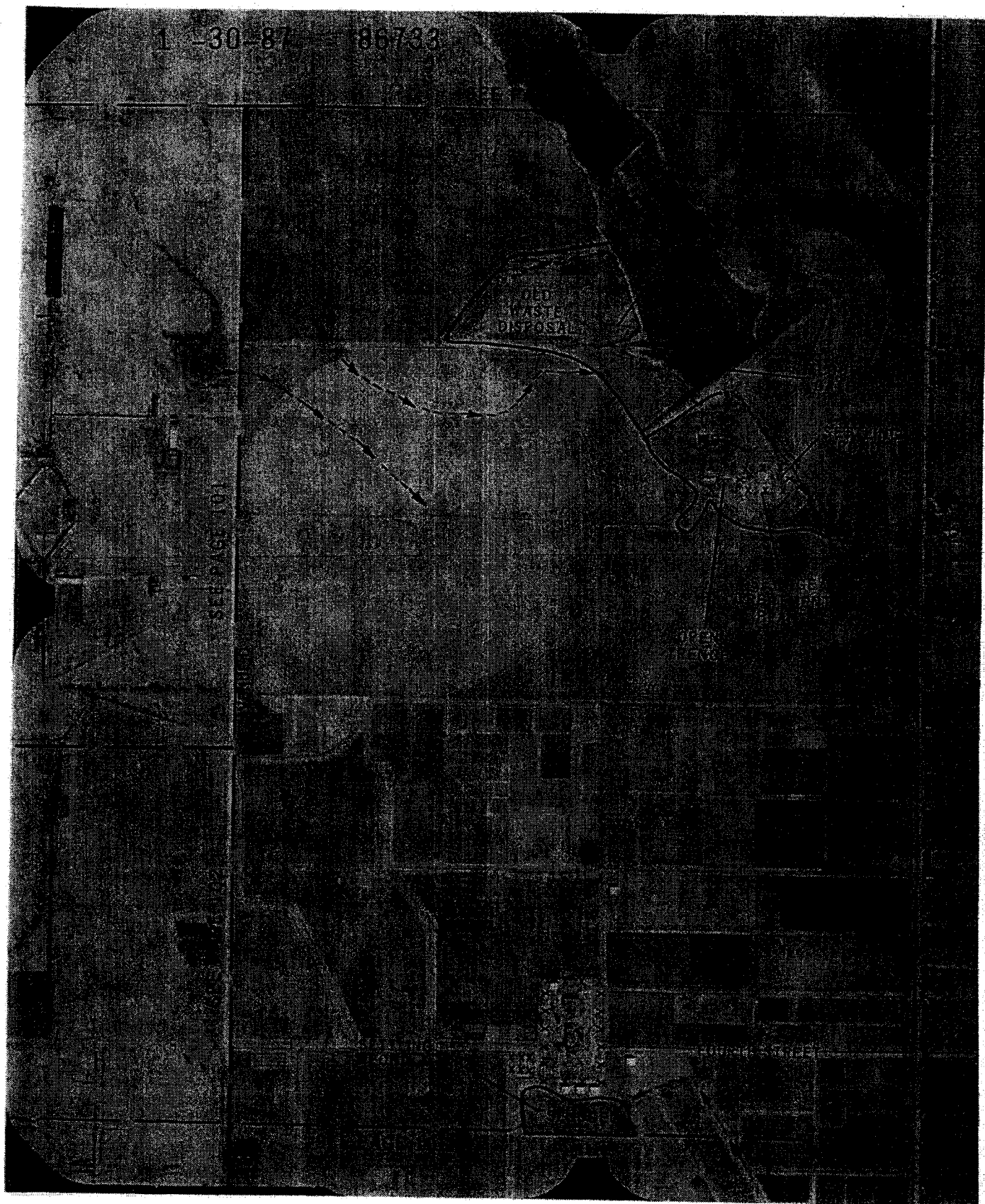


Figure 89. Nebraska Army Ordnance Plant, January 30, 1987. Scale 1:1



scale 1:11,950.

INTERPRETATION CODE

BOUNDARIES AND LIMITS

- x—x—x—x— FENCED SITE BOUNDARY
- UNFENCED SITE BOUNDARY
- x x x x x FENCE
- STUDY AREA




DRAINAGE

- DRAINAGE
- FLOW DIRECTION
- INDETERMINATE DRAINAGE

TRANSPORTATION/UTILITY

- ===== VEHICLE ACCESS
- + + + + + RAILWAY

SITE FEATURES

- ||||||| DIKE
-  STANDING LIQUID
- SL STANDING LIQUID
-  EXCAVATION, PIT (EXTENSIVE)
-  MOUNDED MATERIAL (EXTENSIVE)
- MM MOUNDED MATERIAL (SMALL)
- CR CRATES/BOXES
- DR DRUMS
- HT HORIZONTAL TANK
- PT PRESSURE TANK
- VT VERTICAL TANK
- CA CLEARED AREA
- DG DISTURBED GROUND
- FL FILL
- IM IMPOUNDMENT
- LG LAGOON
- OF OUTFALL
- SD SLUDGE
- ST STAIN
- SW SOLID WASTE
- TR TRENCH
- VS VEGETATION STRESS
- WD WASTE DISPOSAL AREA
- WL WETLAND

Appendix C

UN ARDC MEAD

LEGAL DESCRIPTION

A part of the Northeast Quarter Section 21, Township 14 North, Range 9 East of the Sixth P.M., Saunders County, Nebraska more particularly described as follows: Commencing at a point on the north line of said Section 21, 990 feet east of the North Quarter Corner of said Section 21; thence south deflection angle $90^{\circ}00'$ right a distance of 660 feet to the true place of beginning; thence east deflection angle $90^{\circ}00'$ left a distance of 825 feet; thence south deflection angle $90^{\circ}00'$ right a distance of 660 feet; thence west deflection angle $90^{\circ}00'$ right a distance of 825 feet; thence north deflection angle $90^{\circ}00'$ right a distance of 660 feet to the place of beginning.

Appendix D

List of Contaminants of Concern in Groundwater Identified in the OU 2 ROD

Trichloroethylene (TCE)
Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
1,3,5-Trinitrobenzene (TNB)
2,4,6-Trinitrotoluene (TNT)
2,4-Dinitrotoluene (DNT)
Methylene chloride
1,2-Dichloropropane